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rivers," *i. e.*, those which form the national boundaries between states or flow through more than one state. The demands created by the growth of international shipping had come into irreconcilable conflict with the mediæval and feudal theory of the ownership of rivers, — a particularistic theory which made each state the uncontrolled owner of that portion of the river which lay within its boundaries. From such a theory came heavy local tolls and harassing regulations, so excessive and intolerable that either the theory must be modified or the rivers cease to be used as international highways. In a famous article (Art. 109) the diplomats of Vienna laid it down that the navigation of such international rivers "along their whole course, from the point where each of them becomes navigable, to its mouth, shall be entirely free, and shall not, as far as commerce is concerned, be prohibited to anyone."

Since that day for a century there has been a conflict between what might be called the "states' rights" school, contending that the riparian states may together exclude from river navigation whom they will and make such common regulations as they please, and the "internationalists' school," which maintains that international rivers shall be free and open to the ships of all nations upon equal and reasonable terms. The slow trend of opinion seems to have been in favor of the latter, if we may judge from the various conventions entered into during the last century.

Whether or no we have yet reached a point where it can be said that in the absence of convention international rivers are legally open to the flags of all nations, the diplomats at Versailles can best decide. Certain it is that the problem of international rivers must be considered by them; "in the countries whose fate will have particularly to be decided after this war, questions like those of the Danube, of the Polish rivers, of the Rhine, of the Scheldt, etc., will call for particular attention" (p. 28).

In order to bring together and review the mass of facts and documents connected with the regulation and administration of international rivers during the past century, Mr. Kaeckenbeeck, a gifted young Belgian who soon after the outbreak of the war came to Oxford and took up study in the law school there, has published a monograph entitled "International Rivers." Mr. Kaeckenbeeck advances no theories and carefully refrains from extended discussion; his purpose is simply to present his data and evidence in concise form, and this he does remarkably well. His mastery of a foreign tongue is excellent, and his presentation clear; the work as a whole possesses a unique value as constituting perhaps the only extended account in English of the gradual development of free navigation, announced at the Congress of Vienna, and applied successively to the Rhine, the Scheldt, the Danube, and the Congo and Niger rivers. The international regulations for the navigation of each of these rivers he describes at length. A brief survey at the outset of the mode of dealing with the problem of river navigation as developed under the Roman law, the mediæval law, the Law of Nature, and under the theory of State Sovereignty, adds to the interest of the book. Appendices dealing with other European rivers and briefly touching upon certain American rivers add to its value.

Mr. Kaeckenbeeck, within the limited sphere which he has chosen, has made a real contribution to the historical study of the law of international rivers, and as a reference book upon the nineteenth century treatment of these rivers his book will be of lasting value.

FRANCIS BOWES SAYRE.

THE LEAGUE OF NATIONS AND ITS PROBLEMS. Three Lectures. By L. Oppenheim, M.A., LL.D. Longmans, Green and Company. 1919. pp. xii. 84.

That an American critic should accuse an Englishman of being over-conservative is perhaps only the natural result of a deep-lying temperamental

difference between the staid attitude of a nation old in years and the idealistic, adventurous spirit of a youthful America. Professor Oppenheim is a thinker of ability and a writer of note; as holder of the Whewell Chair of International Law at the University of Cambridge, the founder of which laid the injunction upon every holder of the chair that he should "make it his aim to lay down such rules and suggest such measures as may tend to diminish the evils of war and finally to extinguish war between nations," Professor Oppenheim has published three lectures, in which he seeks to outline the framework upon which the coming League of Nations should be built. It is so easy to throw bricks of destructive criticism at the edifice reared by careful constructive work that one hesitates to criticize at all. Yet many American readers cannot but feel that Professor Oppenheim's vision for a League of Nations is too narrowly confined, and his conception too constricted by the past; his suggestions lack originality, boldness, and even practicability.

After showing that there already exists a substantial historical basis upon which to build the League of Nations, Professor Oppenheim in a few well-reasoned paragraphs points out why a federalized world state is not within the realms of present possibility, if indeed it can ever be attained. Thus far most serious thinkers will be inclined to agree. But when, in his second lecture, Professor Oppenheim goes on to develop his idea that the future League shall be little more than a glorified Hague Conference there comes a distinct sense of disappointment. Only establish International Courts and add to the Hague meetings, already begun, a regular periodicity, says Professor Oppenheim, and you have your "organised League of Nations"; "for by such periodically assembling Hague Peace Conferences there would be established an organ for the conduct of all such international matters as require international legislation or other international action" (p. 34). Accordingly Professor Oppenheim lays down seven principles upon which the League of Nations should be built:

"First principle: The League of Nations is composed of all civilised States which recognise one another's external and internal independence and absolute equality before International Law.

"Second principle: The chief organ of the League is the Peace Conference at The Hague. The Peace Conferences meet periodically — say every two or three years — without being convened by any special Power. Their task is the gradual codification of International Law and the agreement upon such International Conventions as are from time to time necessitated by new circumstances and conditions.

"Third principle: A permanent Council of the Conference is to be created, the members of which are to be resident at The Hague and are to conduct all the current business of the League of Nations. This current business comprises: The preparation of the meetings of the Peace Conference; the conduct of communications with the several members of the League with regard to the preparation of the work of the Peace Conferences; and all other matters of international interest which the Conference from time to time hands over to the Council.

"Fourth principle: Every recognised sovereign State has a right to take part in the Peace Conferences.

"Fifth principle: Resolutions of the Conference can come into force only in so far as they become ratified by the several States concerned. On the other hand, every State agrees once for all faithfully to carry out those resolutions which have been ratified by it.

"Sixth principle: Every State that takes part in the Peace Conferences is bound only by such resolutions of the Conferences as it expressly agrees to and ratifies. Resolutions of a majority only bind the majority. On the other hand, no State has a right to demand that only such resolutions as it agrees to shall be adopted.

"Seventh principle: All members of the League of Nations agree once for all to submit all judicial disputes to International Courts which are to be set up, and to abide by their judgments. They likewise agree to submit, previous to resorting to arms, all non-judicial disputes to International Councils of Conciliation which are to be set up. And they all agree to unite their economic, military and naval forces against any one or more States which resort to arms without submitting their disputes to International Courts of Justice or International Councils of Conciliation" (p. 39).

In modeling the League, upon the past Hague Conferences, Professor Oppenheim would seem to forget the dissatisfaction which the last Hague Conference produced in the minds of many, and the feeling that world affairs of really great moment could not there reach a settlement. "The rights of individual delegates to take up the time of the Conference," said the ranking British delegate in his official report upon the Conference to the British Foreign Secretary, "the rights of the majority over a minority in the absence of unanimity, the power of a chairman to confine the discussion within due limits, — these and many other questions demand solution before another meeting of the Conference can prove satisfactory." (See Brit. Parl. Accounts and Papers, 1908, vol. cxxiv [Cd. 3857], p. 20.) In Professor Oppenheim's plan there is no suggestion for avoiding the stumbling block of the equality of votes, which has wrecked so many international schemes; if to each of the great world Powers is given a vote no greater than that accorded to the smallest principality, it is difficult to believe that the five great world-controlling nations would be willing to intrust large or vital powers to a League so constituted. The only suggestion for overcoming the Unanimity Requirement, which proved such a check upon effective action of large concern at the Second Hague Conference, is the proposal that a minority shall not be able to prevent the *discussion* and *voting* upon new legislation, though the minority can in no way be bound by legislation so voted upon.

If the new League is to be a really effective force in the world, it would seem imperative that some kind of Executive Organ or Council be created to decide quickly and authoritatively in each case whether common action either of a military or economic nature is to be initiated, what kind of action is to be taken, and when and how it is to be brought into play. Yet Professor Oppenheim would have no executive at all, other than a "Permanent Council," endowed apparently with only ministerial power, much resembling the powerless Permanent Bureaus of the various Public Unions. Similarly Professor Oppenheim would have no international military or naval forces, and no international legislation binding upon any unwilling state. As he himself points out (p. 41), he would have no international legislation in the strict sense of the word, but only a codification of law among such states as might find it to their advantage to agree upon a common codification.

In his third lecture Professor Oppenheim deals with the administration of Justice and Mediation within the League of Nations. The main feature of Professor Oppenheim's plan is the institution of an International Court of Appeal to correct errors in law of the international courts of first instance. One cannot help wondering why an Appeal Court is necessary when one thinks of the additional expense and complication of legal machinery thereby involved, to say nothing of the cost in time which may be so vital a matter in the settlement of international disputes. Professor Oppenheim's only reason appears to be that "just as Municipal Courts of Justice, so International Courts of Justice are not infallible. If the States are to be compelled to have their judicial disputes settled by International Administration of Justice there must be a possibility of bringing an appeal from lower International Courts to a Higher Court" (p. 63). Why an appeal court would be more likely to be infallible than the same judges sitting as a court of first instance, Professor Oppen-

heim does not point out. Many forward-looking thinkers may be inclined to question the advisability of having a majority of the court of first instance composed of *advocates, i. e.,* of citizens or representatives of the nations in dispute, rather than of *judges*, — a feature of the 1899 Hague Arbitration Convention which was discarded as objectionable in the light of arbitration experience when the Hague Conference came to remodel the Arbitration Convention in 1907. (Compare Article 24 of the Arbitration Convention of 1899 with Article 45 of the Arbitration Convention of 1907.) The trend of thought to-day is perhaps in favor of having *no* parties in interest sitting as judges but as in ordinary law courts, letting the interested parties appear as advocates to plead their cases before impartial and unbiased judges. To his system of international courts Professor Oppenheim adds a further scheme for the constitution of international councils of conciliation for the settlement of non-justiciable questions.

One cannot help feeling throughout that Professor Oppenheim's mind is too firmly fixed in the ways of the past. He would have a League which, so far as legislation is concerned, would amount to little more than a periodically meeting diplomatic gathering. His conception of sovereignty seems to be the old-time idea that a sovereign state's most sacred and precious duty is to maintain an utter independence of any external control (p. 33). No law can be possible without obligation; and international obligation of necessity presupposes a certain external restriction. As Kant long ago pointed out, it is the obligation and restriction of law that gives real freedom and independence. Although in his conclusion Professor Oppenheim struggles to free himself from the popular bugbear of the sacredness of national sovereignty (p. 75), yet, at least so far as legislation is concerned, it seems essentially to underlie his whole conception of the League.

It would be only carping to point out certain inaccuracies of statement and minor errors. We live at a time which calls for large constructive thought rather than for small destructive criticism. Professor Oppenheim's lectures are readable and thoughtful, and contain much that is worth while. Perhaps Americans are hoping for too much; perhaps it is a sense of disappointment rather than of criticism which will prompt many American readers to feel that the constructive suggestions contained in the book are grounded upon the conservatism of the past rather than upon a large-visioned and practical-minded conception of the future.

FRANCIS BOWES SAYRE.

EXPERIMENTS IN INTERNATIONAL ADMINISTRATION. By Francis B. Sayre. New York: Harpers. 1919. pp. 201.

The author of this interesting little book, having found that after former great wars the victorious allies, in Peace Congress assembled, solemnly dedicated themselves to "the repose and prosperity of Nations, and . . . the maintenance of the peace of Europe," and other lofty sentiments significantly like those enunciated to-day, seeks to discover the reasons for the failure of realization of those pious wishes and finds them (1) in the fact that previous peace treaties ending great wars were "founded essentially upon injustice," and (2) in the fact that nations in the past "have been unwilling to submit to a sufficient amount of external control to make an effective international executive organ possible." The author then presents suggestions for curing, in the forthcoming League of Nations, the defects thus diagnosed. In deprecating the first he points out that "no treaty founded on injustice can endure; no possible effort to retard the irresistible progress and triumph of justice and righteousness in the world can succeed" (pages 7, 160). He offers, however,